SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
ESSEX COUNTY

DOCKET NO. C-1852-83 E

STATE OF NEW JERSEY, DEPARTMENT OF ENVIORNMENTAL PROTECTION,

Plaintiff,

vs.

SCIENTIFIC CHEMICAL PROCESSING, INC., a corporation,et als,

Defendants

BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE

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STATEMENT OF FACTS

A. Prior Litigation

On or about April 30, 1978, the New Jersey Department of Environmental Protection (hereinafter "DEP") issued temporary operating authorization (hereinafter "TOA") to Scientific Chemical Processing, Inc. (hereinafter "SCP"), Energall, Inc. (hereinafter "Energall") and Presto, Inc. (hereinafter "Presto") to operate a solid and hazardous waste disposal operations at 411 Wilson Avenue, Newark, New Jersey (hereinafter "Newark Site").* In addition, SCP was issued a TOA authorizing operation of a similar facility at 216 Paterson Plank Road, Carlstadt, New Jersey (hereinafter "Carlstadt site").

The TOA's were issued pursuant to N.J.S.A. 13:1E-11, and were expressly limited to a one year time period. They authorized said companies to operate "special waste facilities" which involved the handling, processing, treatment, reclaiming and disposal of chemical and hazardous waste.

On April 30, 1979, the above TOAs expired on their own terms. Accordingly, DEP alerted SCP, Energall and Presto that their operations

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* The Newark site is owned by a partnership known as Leif R. Sigmond and Dominick Presto, t/a Sigmond and Presto. (A copy of the deed dated November 17, 1975 conveying this property to Sigmond and Presto is attached hereto as Exhibit "A"). In 1976, Sigmond and Presto entered into a lease agreement with Energall allowing use of the property. The lease was signed by Dominick Presto on behalf of Sigmond and Presto and by Leif R. Sigmond on behalf of Energall, Inc. (A copy of said lease is attached hereto as Exhibit "B").

** The Carlstadt site is owned by Inmar Associates. A copy of the deed conveying said property to Inmar is attached hereto as Exhibit "C"). In 1970, Inmar entered into a lease agreement with SCP allowing use of the property. (A copy of the first page of said lease is attached hereto as Exhibit "D").

should immediately cease. Shortly thereafter, said companies instituted suit in the Chancery Division of the Superior Court seeking an order restraining DEP from enforcing the injunctive provisions of the Solid Waste Management Act. The court dismissed this action for lack of jurisdiction.

SCP, Energall and Presto then sought emergent relief in the nature of a stay pending an appeal from the Appellate Division. In response, DEP filed a motion seeking to enjoin all operations of the defendant companies, and an order directing cleanup of the sites. The Appellate Division denied the application for a stay and also refused to issue the injunctive relief requested by DEP. Instead, the court remanded the matter to DEP for a hearing regarding its failure to renew the TOAs and its directions by mailgram that all handling of solid waste cease.

An administrative hearing was conducted before an Administrative Law Judge during eleven days from June 6, 1979 to July 17, 1979. On October 18, 1979, Administrative Law Judge Goldshore issued a recommended report and decision which found that: SCP, Energall and Presto had permitted spills, leaks and discharges of toxic and hazardous chemicals including carcinogens into the air, water and land of the State; that the TOAs issued to said companies should not be reissued; and that the handling of special waste and solid waste should immediately cease. (See hearing officer's report which is attached hereto as Exhibit "E".)

On March 27, 1980, after receipt and consideration of the hearing officer's recommended report and decision, the Commissioner of the DEP issued his final decision adopting the recommendations of the Administrative Law Judge.

Since the Appellate Division had retained jurisdiction in this matter, the DEP moved before that court for judicial enforcement of the Commissioner's determination. SCP, Energall and Presto also moved for a stay of the Administrative Order pending appeal. On May 7, 1980, the Appellate Division denied the request for the stay, and at the same time, refused to enforce DEP's final action.

By motion dated May 22, 1980, the DEP sought leave from the Supreme Court to take an interlocutory appeal from the above decision of the Appellate Division. On June 12, 1980 the Supreme Court ordered "that appellants immediately cease all solid waste disposal operations including the handling of special waste, at their facilities located at 411 Wilson Avenue, Newark and at 216 Paterson Plank Road, Carlstadt, pending the disposition of the appeal in the Appellate Division." A copy of Supreme Court's order is attached hereto as Exhibit "F".

In an unpublished decision dated October 10, 1980, the Appellate Division affirmed the decision of the Administrative Law Judge. A copy of the Appellate Division's decision is attached hereto as Exhibit "G".

The final result of the above litigation was to close the operations of SCP, Energall and Presto. However, neither the Newark site nor the Carlstadt site was cleaned up.

B. Description of the Newark and Carlstadt Sites

By letter dated December 16, 1980, SCP forwarded the Department a plan to cleanup the Newark and Carlstadt sites. Attached to this plan was an inventory of the waste being stored on the Newark and Carlstadt sites at that time. A copy of SCP's letter is attached hereto as Exhibit "H". SCP never implemented its plan of cleanup.

The inventory submitted by SCP shows that thousands of gallons of toxic, hazardous, carcinogenic and corrosive chemicals were stored at the Newark and Carlstadt facilities. These chemicals include, but are not limited to, oil, chlorinated hydrocarbons, mixtures, chloroform perchloroethylene, ketones, alcohols, esters, aliphatic and aromatic hydrocarbons, methanol, fuel residues, sludge and thin film bottoms. Based upon Exhibit "H" and recent inspections conducted at the Newark and Carlstadt sites, (see Exhibits I, J, K and L) the conditions on these sites are the same today as they were in 1980. They can be summarized as follows:

Newark Site

1. There are at least 2000 drums containing hazardous chemicals situated on site. Many of these drums are presently leaking their toxic contents onto the ground. Moreover, since there is no secondary containment system around the drum storage area, the discharged hazardous substances flow directly into ground water of the State. See Exhibits, H, I, J and K.

2. There are at least 30 stills and hold tanks on site with capacities between 500 gallons and 10,000 gallons. These tanks contain approximately 64,000 gallons of waste chemicals. See Exhibit "H".

3. There are at least 9 trailers situated on site containing approximately 17,000 gallons of chemical waste. See Exhibit "H".

4. On the second floor of the SCP building, there are numerous bottles labeled as containing: used heptane, nitrobenzene, waste solvent, polyvinyl alcohol, ether, cresol, THF, mother liquor from nitrile chloride, butanol bottoms, 1,2-dichloroethane, 2-ethoxyethanol, formic acid, quinoline, p-aminophenol, benzol, propylene diamine, sodium silicate, chloroform, MEK, toluene, ethyl acetate, benzene (pertoleum ether), crude methanol, strong acids, N, N'dimethylanaline, DNOP methanol/water wash, tetrahydrothiophene-1, 1-dioxide, standard silver nitrate, diisooctylphthalate, p-methylene dianiline flakes, sodium phosphate, sodium borate (tetra), nitrilotriacetic acid, phenolphthalein, 1-(1-naphthyl)-2-thiourea, methyl methacrylate monomer, perchloric acid phenol, nitric acid, sodium hydroxide, magnesium hydroxide, hexane, and m-pyridine. See Exhibit "J".

5. There are at least 105 drums of lab packs (drums packed with small sample bottles of chemicals) stored on site. See Exhibit "K".

Carlstadt Site

1. There are more than 50 drums containing hazardous waste stored on site. Many of these drums are presently leaking their contents onto the soil and into the groundwater. See Exhibits "H" and "L".

2. There are at least 55 hold tanks with capacities between 1600 and 19,000 gallons situated on site. Many of these tanks are filled to capacity with waste chemicals. A DEP inspector observed serious leaks at storage tanks No. 105, 114 and 118. See Exhibit "H" and "L".

3. At least 15 tank trailers holding hazardous waste are situated on site. See Exhibit "H".

Many of the chemicals either detected or reported to be present at the Newark and Carlstadt sites are known to be toxic, carcinogenic and otherwise extremely hazardous. See affidavit of Dr. Robert Tucker, which is attached hereto as Exhibit "M" and Exhibit "E". For example, at the admistrative hearing before Administrative Law Judge Lewis Goldshore there was testimony by Dr. Dhun B. Patel, a medicinal and environmental chemist, that the above chemicals can cause: skin and eye irritation, blindness, liver disorders, kidney and central nervous system problems, effects on the heart and blood disorders. See Exhibit "E" pp 10. 11 and 12.

As noted above, spills and leaks of hazardous substances are constantly occurring at the Newark and Carlstadt sites because of the poor condition of the drums and tanks holding the chemical waste. These spills are causing extensive pollution of the ground water and soil of the State. In addition, said conditions pose an immediate threat of fire and/or explosion. Many of the waste chemicals on the sites are highly flammable materials which ignite at low temperatures. Moreover, of particular concern in this regard are the five drums of cumene hydroperoxide stored at the Newark site, since this chemical is known to have explosive characteristics. See Exhibit "I".

It is important to note that the Newark site is situated in the heavily populated "Ironbound" section of the City of Newark. Residential and industrial areas are located nearby. Accordingly,

if a chemical fire were to occur, toxic and hazardous fumes would be emitted into the air posing a substantial threat to those who work or live in the area.

Deputy Chief Morgan also states that the following fire code violations exist at the Newark site.

a. Inoperative sprinkler system.
b. Failure to obtain permits from the Fire Department to operate chemical business.
c. Failure to obtain permits to store flammable and hazardous chemicals.
d. Improper storage of flammable and hazardous chemicals.
e. Defective and improper instllation of electrical wiring.
f. Failure to install explosive proof wiring in the packaging area. (Exhibit "I").

A similar threat of fire and/or explosion (Exhibit "I") is posed by the Carlstadt site. This facility is situated along the Paterson-Plank Road directly across from the New Jersey Sports and Exposition Authority and near to the heavily traveled Route 3. The facility is also located adjacent to the Berrys Creek Tide Marsh. Thus, it is obvious that a chemical fire at this facility would have disasterous consequences to man and the environment.

In sum, based upon the Administrative Law Judge's report and the affidavits submitted herewith by DEP and City of Newark inspectors, it is clear that the conditions allowing pollution of the ground water and the soil of the State have existed at the Newark and Carlstadt sites since at least 1979. Furthermore, both of these sites pose an immediate threat of a chemical fire and/or explosion. Notwithstanding the existence of these dangerous and illegal conditions, defendants have taken no action to cleanup and remedy the same.

The Operations of SCP, Energall and Presto

Although defendants argued that the above corporations were distinct entities, the Administrative Law Judge found in the administrative report, that "because of their interlocking ownership, management and operations, the terms and conditions of this Recommended Report and Decision are applicable to all three (3) corporations."* Exhibit "E", p 23. This conclusion was fully supported at the administrative hearing by the testimony of Carl Ling, a chief operating officer of Presto, Inc. His testimony was summarized by the Administrative Law Judge as follows:

> "Scientific Chemical Processing (SCP) was a distillation process for fuel blending. Energall consists of a storage facility for material turned over by SCP. Presto, Inc. handles chlorinated solvents. There is one large shop area and the maintenance personnel work out of Newark. The offices are joint, except for Presto; the secretaries are shared by all three (3) operations. Mr. Barnes runs both plants. The owners of the three (3) corporations are the same and the entities work together. References omitted, Exhibit "E", p 12.

On cross-examination, Mr. Ling stated:

> "he was responsible to Leif Sigmond and Dominick Presto, who are the owners of Presto, Inc. Sigmond and Presto also own Energall and Scientific Chemical Processing. Presto Inc. was incorporated in 1975, but did not commence operations until January 1978. Energall, a sales organization for fuels blended by SCP, commenced operations around 1972. In describing

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* A list of the corporate directors and/or officers of SCP, Energall and Presto as set forth on annual reports submitted to the Office of the Secretary of State is attached hereto as Exhibit "N". A list of the corporate officers and/or directors as set forth on each corporation's Certificate of Incorporation is also set forth on Exhibit "N".

> the point in time when Energall receives the materials from SCP, Mr. Ling conceded: "It is really sort of a blurred thing where they receive the materials". Mr. Sigmond would have responsibility with respect to "high gravity" decisions for all three (3) corporations. Exhibit "E", p 14.

Based upon Mr. Ling's testimony, it is clear that no real distinction existed between the SCP, Energall and Presto corporate entities.

Moreover, Mr. Ling's testimony make it clear that he reported to Leif Sigmond and Dominick Presto who, according to Ling, are the owners of SCP, Presto and Energall. Plainly, these individuals had significant control of the operations of said corporations. Finally, the Administrative Law Judge also found that Herbert G. Case and Mack Barnes held significant management and decision making positions in SCP, Energall and/or Presto. Exhibit "E", p 20.

Inmar Assodicates, Inc. - Control over 215 Paterson-Plank Road Carlstadt, New Jersey - Carlstadt Site.

During 1978, SCP paid Inmar rent for use of the Carlstadt property in the amount of $3,087.51* per month. Said payments were presumably made pursuant to the terms of the lease between Inmar and SCP dated October 31, 1970. Exhibit "D". Thus, it is clear that Inmar was paid a substantial sum of money by SCP to use the Carlstadt site.

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* The State presently holds copies of Inmar's invoices to SCP in said amount for 1978.

As early as August 8, 1972, Mr. Mahan was advised by the Hackensack Meadowlands Development Commission (HMDC) that SCP was improperly storing chemical materials at the Carlstadt site. See Exhibit "O". Thereafter, the HMDC forwarded letters to Inmar, Mr. Presto as attorney for SCP, and Leif Sigmond regarding these unsatisfactory conditions and the necessity to correct same. However, Inmar has not taken such action.

Based upon these facts, Inmar and Mahan knew or should have known of the illegal conditions at the Carlstadt site.

Sale of the Newark Site

Approximately two years ago, the firm of Olsen and Hassold, Inc. advised the DEP that it was interested in purchasing the Newark site. In connection with the purchase, Olsen and Hassold indicated that it would be willing to undertake a cleanup of the site. Accordingly, representatives of DEP and Olsen and Hassold met on several occasions to discuss a protocol for cleanup. An agreement was reached and embodied in an Administrative Consent Order.

Representatives of Olsen and Hassold next attempted to negotiate the purchase of the Newark site from Sigmond and Presto, the owners of the property. DEP is advised that the parties were not able to reach an agreement.

Based upon the circumstances as set forth above, the DEP had no other alternative but to institute this action seeking abatement of the hazards posed by the Newark and Carlstadt site.

Finally, defendants SCP, Sigmond, Barnes and Case were recently convicted on mail fraud charges in the United States District Court. Plaintiff was advised that the basis for the conviction was the mailing of falsified reports to the Department of Environmental Protection in connection with the operations of SCP.

POINT I

DEFENDANTS ARE STRICTLY LIABLE FOR VIOLATIONS OF NEW JERSEY'S REMEDIAL ENVIRONMENTAL STATUTES

In New Jersey, it has become increasingly clear that environmental degradation is a critical contemporary problem. City of Bridgeton v. B.P. Oil, Inc., 146 N.J. Super 169, 177-78 (Law Div. 1976). Also see, 9 Rutgers-Camden L. Journal 21-22, 1977. This is especially true in the area of pollution by hazardous substances and water quality control. N.J. Builders v. Dept. of Environmental Protection, 169 N.J. Super. 76, 86 (App. Div. 1979), certif. den. 81 N.J. 402 (1979). As a result of this situation, the New Jersey Supreme Court has expressly underscored the State's obligation to protect and preserve its environment by declaring that, "the State has not only the right to protect its resources, but also the duty to do so." Hackensack Meadowlands v. Mun. San. Landfill Auth., 68 N.J. 451, 477 (1975), vacated and remanded on other grounds 473 U.S. 617, 57 L. Ed. 2d 475, 68 S. Ct. 2531 (1978); State v. North Jersey Dist. Water Supply Comm., 127 N.J. Super. 251, 260 (App. Div. 1974), certif. den. 65 N.J. 578 (1974), certif. den. 419 U.S. 999, 42 L. Ed. 2d 273, 95 S. Ct. 314 (1974).

The New Jersey Legislature has reacted to this situation by enacting the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 23:5-28. Defendants have violated each of these Acts.

The Spill Compensation and Control Act

At N.J.S.A. 58:10-23.11a the legislature set forth its findings and declaration for the Spill Compensation and Control Act, as follows: (hereinafter "Spill Act").

> The Legislature finds and declares: that New Jersey's lands and waters constitute a unique and delicately balanced resource; that the protection and preservation of these lands and waters promotes the health, safety and welfare of the people of this State; that the tourist and recreation industry dependent on clean waters and beaches is vital to the economy of this State; that the State is the trutee, for the benefit of its citizens, of all natural resources within its jurisdiction; and that the storage and transfer of petroleum products and other hazardous substances between vessels, between facilities and vessels, and between facilities, whether onshore or offshore, is a hazardous undertaking and imposes risks of damage to persons and property within this State. [Emphasis added]
>
> The Legislature finds and declares that the discharge of petroleum products and other hazardous substances within or outside the jurisdiction of this State constitutes a threat to the economy and environment of this State. The Legislature intends by the passage of this act to exercise the powers of this State to control the transfer and storage of hazardous substances and to provide liability for damage sustained within this State as a result of any discharge of said substances, by requiring the prompt containment and removal of such pollution and substances, and to provide a fund for swift and adequate compensation to resort businesses and other persons damaged by such discharge.

The Spill Act prohibits the discharge of hazardous substances at N.J.S.A. 58:10-23.11c, and the terms discharge and hazardous substance are defined at N.J.S.A. 58:10-23.11 (h) and (k) as follows:

> "Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substance into the waters of the State or onto lands from which it might flow or drain into said waters, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

> "Hazardous substances" means such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the Federal Environmental Protection Agency pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.) and the list of toxic pollutants designated by Congress or the EPA pursuant to Section 307 of that act; ....

Finally, pursuant to N.J.S.A. 58:10-23.11g(c)

> "Any person who has discharged a hazardous substance or is in any way responsible for any hazardous substance which the Department has removed or is removing .... shall be strictly liable, jointly and severally, without regard to fault for all cleanup and removal costs." [Emphasis added]

The above provisions of the Spill Act have provided the basis for liability in several recent cases. In Lansco, Inc. v. Dept. of Environmental Protection, 138 N.J. Super 275 (Ch. Div. 1975),aff'd 145 N.J. Super 433 (App. Div. 1976) certif. den. 73 N.J. 57 (1977), a company was held liable for an oil spill that occurred when an unknown party opened the valve of an oil tank on the company premises. Liability of the company was found despite the fact that it was not at fault for the incident. The court concluded that landowner liability was warranted under the Spill Act for discharges occurring on the property as long as those discharges were not caused by an act of God or an act of war. See N.J.S.A.58:10-23.11g(d). The act of a third party was not found to exonerate a landowner from liability under the Act. On this basis, the landowner's insurer was held responsible for the cleanup costs under a general liability policy.

In State, Dept. of Environmental Protect. v. Ventron, et als 182 N.J. Super 210 (App. Div. 1981), certif. granted 91 N.J. 195 (1982) the Appellate Division affirmed the Chancery Division by holding that three corporations, Wood Ridge, Ventron and Velsicol, were jointly and severally liable under authority of the Spill Act and common law nuisance principles for discharging mercury during mercury recovery and reprocessing operations. In addition, the landowner during the time when the discharge occurred was held liable.

In N.J. Transportation Dept. v. PSC Resources Inc., 175 N.J. Super 447 (Law Div. 1980) the Law Division held that a corporate defendant which purchased the assets of a predecessor corporation, and continued its operation and disposal practices was liable under the Spill Act for claims arising from the discharge of pollutants into a lagoon.

Finally, in DEP v. Chemical Pollution Sciences, Docket No. A-1276-81T3, the Appellate Division held that two chemical companies located on adjacent parcels of property were strictly liable, jointly and severally, under authority of the Spill Act for chemical pollution of their property and a nearby waterway known as Prickett's Brook. A copy of this decision is attached hereto as Exhibit "P".

Based upon the facts of this matter as set forth by Administrative Law Judge Goldshore's report (Exhibit "E") and the affidavits by DEP inspectors (Exhibits J, K. and L) and Newark's Deputy Fire Chief (Exhibit "I"), it is clear that SCP, Energall and Presto discharged hazardous substances, during their operations at the Newark and Carlstadt sites. Moreover, since these facilities were not properly closed,

the discharge of hazardous substances continues to occur. Under these circumstances, said corporations are strictly liable, jointly and severally, for violations of the Spill Act, N.J.S.A. 58:10-23.11(c). N.J.S.A. 58:10-23.11g(c). Lansco Inc. v. Dept. of Environmental Protection, supra; Department of Environmental Protection v. Ventron Corp., et al, supra.

Further, based again on the findings in the Law Judge's report, Sigmond, Case, Barnes and Dominick Presto each had significant management control over the operations of SCP, Energall and Presto. Exhibit "E", pp 14 and 21. The facts set forth in annual reports for these companies support this finding since each of these individuals held director-level positions in one or more of the companies. (Exhibit "N"). Thus, Sigmond, Case, Barnes and Dominick Presto each had authority to prevent the spills which occurred at the Newark and Carlstadt site. It is respectfully submitted that said individuals are also strictly liable, jointly and severally, for violations of the Spill Act, since they are responsible persons within N.J.S.A. 58:10-23.11g(c).

Likewise, the owners of the Newark and Carlstadt sites are strictly liable for violations of the Spill Act which have and continue to occur on the respective properties. Lansco Inc. v. Dept. of Environmental Protection, supra; Department of Environmental Protection v. Ventron Corp., et al, supra. In both cases, the court found that parties owned the land during the time when it was polluted were responsible under the Spill Act. Similar facts exist in the present matter. Sigmond and Presto have owned the Newark property since 1978. They leased the property to Energall (Exhibit "B") and allowed SCP, Energall and Presto to use said property for a waste chemical reprocessing operation

Similarly, Inmar leased the Carlstadt property to SCP in 1970, (Exhibit "D"), for use as a waste chemical reprocessing operation. Therefore, these landowners were well aware of the hazardous activities taking place on their respective properties. Under these circumstances it is respectfully submitted that the landowners are responsible parties within the meaning of N.J.S.A. 58:10-23:11g(c)

A property owner has a duty to remedy a dangerous condition existing on his property in order to prevent harm to others. Prosser, Law of Torts (4th Ed. 1971) at 356-357; Restatement of Torts (Second 5364 at 259-262); 66 CJS, Nuisances (1950) §88 at pp 842-845. This responsibility "is imposed upon the owner because that is where it ought to rest. It is an element of this right of control over property; his authority to direct the purposes for which it may be used." Moore v. State, 107 Tex 490, 181 SW 438 (Sup. Ct. 1915). It follows, therefore, that the landowners in the instant matter are responsible for the discharges that occurred on their property since they were in a position to prevent these illegal acts from occurring. Accordingly, they are strictly liable, jointly and severally for all violations of the Spill Act.

The above facts are clearly distinguishable from those in State v. Exxon Corporation, 157 N.J. Super 464 (Ch. Div. 1977), where the court found no liability under the Spill Act for a party who purchased contaminated property after the pollution occurred. A similar conlusion was reached in Dept. of Environmental Protection v. Ventron et als, supra, regarding the libaility of the Wolfs who purchased the polluted property after discharges had occurred.

For the foregoing reasons, it is respectfully submitted that

all defendants named herein are liable under the Spill Act for the discharges which have and continue to occur. Plaintiff therefore urges this court to order defendants to remedy all past spills and properly remove all hazardous wastes from the Newark and Carlstadt sites in order to prevent further spills from occurring.

Water Pollution Control Act

The Water Pollution Control Act provides that it is "unlawful for any person to discharge any pollutant, except in conformity with a valid New Jersey Pollutant Discharge Elimination System Permit...." N.J.S.A. 10A-6(a). Upon discovery of such violation, the Commissioner of the DEP is authorized to bring a civil action in the Superior Court for the following relief against persons who violate the Act.

> (1) A temporary or permanent injunction;
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> (2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;
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> (3) Assessment of the violator for any cost incurred by the State in removing, correcting or terminating and adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which the action under this subsection may have been brought;
>
> (4) Assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish, or aquatic life, and for any other actual damages caused by an unauthorized discharge....

Person is defined at N.J.S.A. 58:10A-3 as:

> "Person" means any individual, corporation, company, partnership, firm, association, owner or operator

> of a treatment works, political subdivision of this State and any state or interstate agency. "Person" shall also mean any responsible corporate official for the purpose of enforcement action under Section 10 of this act; [Emphasis added]

Discharge is defined at N.J.S.A. 58:10A-3(e) as:

> "the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant into the waters of the State or onto land or into wells from which it might flow or drain into said waters.....".

Finally, Pollutant is defined at N.J.S.A. 58:10A-3(n) as:

> "Pollutant: means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal or agricultural waste or other residue discharged into the waters of the State.

Based upon the Administrative Law Judge's report (Exhibit "E") and Exhibits I, J, K, and L, it is clear that pollutants were discharged at the Newark and Carlstadt site during the operations of SCP, Energall and Presto. Under the definition of person set forth in the Water Pollution Control Act the corporations, SCP, Energall and Presto together with their responsible corporate officers, Sigmond, Case, Barnes and Dominick Presto are liable for said discharges.

It is respectfully submitted that the landowners, Sigmond and Presto (Newark site) and Inmar Associates, Inc. (Carlstadt site) also fall within the definition of person in the Act. In this instance they are a partnership and a corporation responsible for the discharge of pollutant's onto their respective properties. As stated above,

landowners have a duty to remedy dangerous conditions on their property and to prevent illegal conditions from occurring. Prosser, Law of Torts, supra; Restatement of Torts, supra; Moore v. State, supra. It is clear from the facts of this matter that the landowners knew of the illegal and dangerous conditions on their properties, but failed to take action to prevent or remedy same. Under these circumstances the landowners are "persons" responsible under the Act for discharges of pollutants on their properties.

Solid Waste Management Act

The Solid Waste Management Act empowers the DEP to supervise and regulate solid waste collection and disposal facilities in the State of New Jersey. Pursuant to N.J.S.A. 13:1E-9, the DEP is authorized to seek injunctive relief and statutory penalties in a summary manner, in the Superior Court, against any person who violates provisions of the Act and/or rules and regulations promulgated thereto.

Pursuant to N.J.S.A. 7:26-1.4 disposal means, "the storage, treatment, utilization, processing or final disposition of solid waste". Since SCP, Energall and Presto undertook all of these activities, it is clear that they were subject to regulations by the Solid Waste Management Act and its regulations. Indeed, said companies applied for and received TOA's from the Solid Waste Administration of the DEP authorizing the operation of special waste facilities at the Newark and Carlstadt sites from April 30, 1978 to April 29, 1979.

On June 12, 1980 the New Jersey Supreme Court ordered that all activities of SCP, Presto and Energall immediately cease. Since that time defendants have taken no action to properly close the Newark and Carlstadt sites. See generally N.J.A.C. 7:26-9:1 et seq. The following provisions of this regulation are applicable.

7:26-9.2 General Prohibitions

(a) No person shall cause, suffer, allow or permit the acceptance, transfer, storage, processing, treatment, recovery, disposal or other handling of hazardous waste:

1. In such a manner as to violate the provisions of this subchapter or any other applicable federal or state statute, code, rule or regulation; or
2. In a manner which causes or may cause an unauthorized discharge of pollutants onto or into the land, surface water, groundwater or air of this State.

7:26-9.4 General Facility Standards

(e) General requirements for ignitable, reactive, or incompatible wastes include the following:

1. The owner or operator* shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste;
   i. This waste shall be separated and protected from sources of ignition or reaction including but not

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* As set forth in the Statement of Facts, supra, the owners and operators of SCP, Energall and Presto were Sigmond, Case, Barnes and Dominick Presto.

limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition, and radiant heat;

7:26-9.6 Preparedness and Prevention

(a) Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or ground water which could threaten human health or the environment.

7:26-9.8 General Closure Requirments

(b) The owner or operator shall close the facility in a manner that minimizes the need for further maintenance and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater, or surface waters, or to the atmosphere.

(h) The owner or operator shall submit the closure plan according to the requirements of this paragraph.

2. The owner or operator shall submit the closure plan to the Department no later than 15 days after:

i. Termination of eligibility to operate an existing facility prior to final disposition of a permit application under N.J.A.C. 7:26-12.1 et seq. (except when a permit is issued simultaneously with termination of this status); or

ii. Issuance of a judicial decree or compliance order to cease receiving wastes or to close.

To date the owners and operators of SCP, Energall and Presto have failed to take any action directed at properly closing the Newark and Carlstadt facilities. Therefore, defendants, Sigmond, Barnes, Case and Dominick Presto, the owners and operators of the above facilities, are in violation of N.J.A.C. 7:26-9.1 et seq.. These defendants have allowed the storage, processing and handling of hazardous waste in such a manner as to violate the provisions of The Spill Compensation and Control Act, The Water Pollution Control Act, The Solid Waste Management Act and N.J.S.A. 23:5-28 in violation of N.J.A.C. 7:26-9.2a (1) and (2). Moreover, the waste chemicals on the sites are improperly stored in a manner which could cause fire and/or explosion in violation of N.J.A.C. 7:26-9.4e(1), N.J.A.C. 7:26-9.6a and N.J.A.C. 7:26-9.8b. Finally, these defendants are in violation of N.J.A.C. 7:26-9.8h 2(ii) since they have failed to submit, and thereafter implement, an appropriate closure plan for the Newark and Carlstadt sites. On this basis, Sigmond, Case, Barnes and Dominick Presto must be ordered to immediately close the Newark and Carlstadt sites under the supervision of DEP using an approved closure plan.

It is respectfully submitted that the landowners of the Newark and Carlstadt sites are also in violation of the Solid Waste Management Act since they are improperly storing hazardous waste without registration and engineering design approval. N.J.S.A. 13:1E-5(a), N.J.A.C. 7:26-2.2.

N.J.S.A. 23:5-28

Pursuant to N.J.S.A. 23:5-28 no person may discharge or otherwise permit the runoff, flow or seepage of any deleterious substances into the ground or surface waters of the State or onto land from which such runoff may occur. The DEP is authorized by this statute to seek injunctive relief and penalties to prevent violations thereof.

In the instant matter, Administrative Law Judge Goldshore found after the hearing that SCP, Presto and Energall allowed toxic and hazardous chemicals, including carcinogens, to discharge into the air, water and land of the State. Exhibit "E" p 24. Said discharges have and will continue to occur. Exhibits I, J, K and L. Accordingly SCP, Presto and Energall together with Sigmond, Case, Barnes and Dominick Presto have and continue to violate N.J.S.A. 23:5-28.

Moreover, even though the above corporations were shut down in 1980, the landowners have taken no action to abate the discharges of hazardous substances. As such, they have permitted the runoff of these deleterious chemicals into the ground or surface water of the State or onto land from which such runoff may occur. It is respectfully submitted that they too are liable, jointly and severally for violations of N.J.S.A. 23:5-28.

Strict Liability

The above cited statutes are remedial in nature because they are manifestly intended to prevent and/or abate environmental pollution. Therefore, they are entitled to liberal construction in order to achieve their purpose. Global American Ins. Managers v. Perera Co., Inc., 137 N.J. Super 377 (Ch. Div. 1975), aff'd. 144 N.J. Super. 24 (App. Div. 1976); Lansco, Inc. v. Department

of Environmental Protection, 138 N.J. Super. 275, 285-86 (Ch. Div. 1975) aff'd. 145 N.J. Super. 433 (App. Div. 1976), certif. den. 73 N.J. 57 (1977).

Strict liability for pollution of the State's environment has been imposed on one who stores or handles hazardous substances. City of Bridgeton v. B. P. Oil Inc., supra. In essence, the basis for this decision was drawn from the law of products liability wherein the court stated as follows:

> "In the case at bar, the activity, storage of oil, created a substantial risk and defendant therefore had a high standard of care imposed on him. Coupling the standard of care established by statute with the requirements for high standard because of the inherent dangers involved in the storage, defendant must be required to exercise an extremely high burden....
>
> As a society we are constantly made aware of the diminishing quantity and quality of our environment.... [T]his is no longer the land of our fathers with its limitless bounty from sea to sea. This generation of Americans has seen its bounty wasted by mindless and reckless misuse. It has further seen the almost unchecked development of products whose....misuse or improper employment leads to disfigurement and death. The law is not-- ought not to be-- so feeble as to exonerate those whose conduct causes harm to others by reason of such use or abuse." 145 N.J. Super. at 177-178.

In addition to the common law basis for imposition of strict liability for discharging a hazardous substance, the above statutes impose liability without fault upon those who violate them: Lansco, Inc. v. Department of Environmental Protection, supra; State v. Kinsley, 103 N.J. Super 190 (Cty. Ct. 1968), aff'd 105 N.J. Super 347 (App. Div. 1969); Department of Health v. Concrete Specialties, Inc. 112 N.J. Super 407 (App. Div. 1970). This being the case, in

order to sustain a cause of action predicated on one or all of the above statutes, DEP need only prove that the person(s) charged with a violation, engaged in conduct which the statutes prescribe. There is no requirement that the State establish guilty knowledge or mens rea in order to prevail. State v. Kinsely, supra.

In the present matter, there is clear evidence that defendants have continually violated the above statutes without regard for the devastating effects which they pose to man and the environment.

The Department established at a prior administrative hearing (See Exhibit "E", p 23 and 24) and by the attached affidavits (Exhibits I, J, K,L, and M) that thousands of hazardous, toxic, flammable carcinogenic and potentially explosive materials are presently stored on the Newark and Carlstadt sites. These hazardous substances are stored in drums, tanks and tank trailers which are leaking, corroding, and spilling their contents onto the ground. Since there is no secondary containment around the storage areas at the sites, the leaking chemicals flow onto the ground, and thereafter, into the surface and ground water of the sites. It was because of these hazardous conditions the Administratige Law Judge recommended that SCP, Energall and Presto be closed. Exhibit "E", p 24.

Moreover, the potential for a fire or explosion, poses a very real and immedaite threat to those who live in the vicinity of the sites. If such a fire were to occur at either site, poisonous and noxious fumes would be emitted into the air. These chemicals are toxic, carconogenic and known to cause birth defects, blindness, liver disease, kidney disease, heart disorders, blood disorders and

irritations to the respiratory tract, eyes and skin. Exhibit "E" p. 11, 12 and 13 and Exhibit "M". Accordingly, prompt action is required to abate the hazards posed by the Newark and Carlstadt sites.

Based upon the above facts, defendants are in violation of N.J.S.A. 58:10A-1 et seq. , N.J.S.A. 58:23.11 et seq., N.J.S.A. 23:5-28. Moreover, defendants are in violation of N.J.S.A. 13:1E-1 et seq. because they have not properly closed their solid waste facilities. Plainly, these statutory violations pose a substantial threat to man and the environment. Plaintiff respectfully urges that this court grant the relief requested in the complaint ordering defendants to immediately remove all waste chemicals from the Newark and Carlstadt sites and to cleanup the ground water and soil contaminated by same.

POINT II

THE DEFENDANTS ARE GUILTY OF CREATING, CONTRIBUTING TO AND/OR MAINTAINING A NUISANCE UNDER BOTH STATUTORY AND COMMON LAW

It is well established that the Legislature may, within constitutional limits, declare particular conduct or use of property a nuisance. Mayor & C. of Alpine Borough v. Brewster, 7 N.J. 42, 50 (1951); Restatement (Second) Torts ¶ 821 B (1979); Prosser, Law of Torts (Fourth Edition p 606. The authority to do so emanates from the State's police power which is exercised, in this area, to protect the public health and safety. Cresshill Borough v. Dumont Borough, 28 N.J. Super 26 (Law Div. 1953) aff'd 15 N.J. 238 (1954).

In New Jersey the Legislature has enacted the following environmental legislation: Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; The Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq; and the Water Quality Improvement Legislation, N.J.S.A. 23:5-28. These statutes are intended to prevent the degradation of the water quality and to preserve the environment by prohibiting persons from discharging hazardous and deleterious substances. See N.J. Home Builders v. Environmental Protection Dept. 169 N.J. Super 76 (App. Div. 1979) certif. den. 81 N.J. 402 (1979). Thus, parties who violate these statutes are liable both under the statutes themselves and under principles of public nuisance. Creshill Brough v. Dumont Borough, supra.

As set forth hereinabove, defendants have and continue to allow discharges to occur at the Newark and Carlstadt sites. Such

conduct is in violation of the above environmental statutes. Accordingly, all defendants named herein are guilty of creating, contributing to and/or maintaining a public nuisance.

In addition to creating and maintaining a nuisance based upon statutory violations, defendants' conduct has also created a common law nuisance. At common law, public nuisance is an unreasonable interference with a common right of the general public. Twp. of Cherry Hill v. N. J. Racing Comm., 131 N.J. Super 125 (App. Div. 1974); Restatement (Second) of Torts § 821 B (1979). The three bases under which nuisance may be established are: (1) intentional and unreasonable conduct; (2) negligent conduct and (3) conduct which is so abnormal or out of place as to warrant imposition of strict liability. 58 Am. Jur. 2d, Nuisances § 1 at 19 (1971). In order to establish that a nuisance exists under the common law, all that need be shown is that there is or has been an unreasonable, unwarranted or unlawful use by a person ofhis real property which results in a material annoyance, inconvenience or harm to others. 66 C.J.S., Nuisance §1 (1950).

In the instant matter, it is clear that SCP, Energall and Presto together with their directors and/or officers Sigmond, Case, Barnes and Dominick Presto have created a public nuisance at their Newark and Carlstadt sites. This is because the threat of fire and/or explosion thereon constitutes an immediate threat to the public health and welfare. Such conditions amount to an unreasonable and unlawful use of the properties because of their substantial interference with the public's right to have water free of toxic chemicals.

Moreover, it is respectfully submitted that the property owners of the Newark and Carlstadt sites have unreasonably allowed discharge of hazardous substances to continue. The Supreme Court shut down the Newark and Carlstadt operations in June of 1980. Since that time, the hazardous chemicals have continued to leak and/or spill onto the ground and into the surface water and ground water. It is patently unreasonable that the property owners have not taken action to abate the hazardous conditions on their property.

It is well settled that one who acquires property which contains a nuisance is chargeable with maintaining it, if after learning of its existence, he fails to properly abate it. This is true irresponective of whether the nuisance in question was created by his predecessor in title or some other party. Trondle v. Ward 129 N.J.L. 179 (E & A 1942); Garvey v. Public Service, 115 N.J.L. 280 (E & A 1935); Monzolino v. Grossman, 111 N.J.L. 325 (E & A 1933); Braelow v. Klein, 100 N.J.L. 156 (E & A 1924). A landowner who discovers an unreasonable condition on his land, irrespective of who created the condition is under a duty to remedy it in order to prevent harm to others. Prosser, Law of Torts (Fourth Edition), pp 356, 357 Restatement of Torts (Second), § 364, pp 259-262. The basis for imposing liability in situations of this type is not mere ownership of the land but rather the fact that the property owner knows of the nuisance and fails to abate it. 58 Am. Jur. 2nd, Nuisances § 49 (1971); 66 CJS, Nuisances § 88 (1950). With the ownership of land runs certain rights and duties, including a requirement that the

landowner keep his property in such a manner as to comply with the law. This includes the abatement of dangerous conditions on his property, even if caused by a trespasser. Restament of Torts (Second), § 364, pp 259-262 (1965); Prosser, Law of Torts, supra.

The above rules has been followed in other jurisdictions. Thus, in City of Turlock v. Bristow, 107 Cal. App. 750, 284 P. 962 (1930) where a public nuisance existed in connection with a ditch which had not been maintained and had become a dumping place for garbage, the court rules that:

> "every successor owner of property who neglects to abate a continuing nuisance upon, or in the use of such property created by the former owner, is liable therefore in the same manner as the one who creates it. 284 P. at 964."

In Tenn. Coal and Iron Co. v. Hartline 11 So. 2d 53 (1943) plaintiff was injured by a rock blown from blasting operations on defendant's property. On these facts the court held that a landowner has a duty to control the activities of others while on his land. Moreover, he may be liable for the nuisance created by another on his property if he had knowledge of the condition and allowed same to continue. Tenn. Coal and Iron Co. v. Hartline, supra at 839. Finally, in Philadelphia Chewing Gum Corporation v. Commonwealth, 35 Pa. Commonwealth CF 443, 387 A2d 142 (1978), aff'd sub. nom Nat'l Wood Preservers Inc. v. Commonwealth, 414 A2d 37 (Pa. 1980) the court held that an owner or occupier of land on which a polluted condition exists, can be liable under the law of public nuisance:

"if he permitted or authorized the creation of the condition on his land. Such an owner or occupier can also be ordered to take corrective measures if he (1) knows or should know of the existence of the condition on the land; and (2) associates himself in same positive respect, beyond mere ownership or occupancy, with the condition after its creation." 387 A2d at 150.

As stated above, both the Newark and Carlstadt sites constitute a public nuisance because numerous statutory violations exist thereon. Furthermore, they constitute a public nuisance under the common law standard because of dangers which they pose. The nuisance was created by the operations of SCP, Energall and Presto. Accordingly said companies together with their directors, managers and/or officers with control over their operations (Sigmond, Case, Barnes and Dominick Presto) are responsible to abate the nuisance, and to pay damages caused thereby.

Finally, the owners of the Newark and Carlstadt sites are responsible for the continuing public nuisance which they have allowed to exist on their property. The record in this matter makes it clear that both Sigmond and Dominick Presto, the individual partners of the owner of the Newark site, were well aware of the conditions on the site. Exhibit "E" pp 13 and 20. Further proof of knowledge of the conditions comes from a recent action brought by the City of Newark in Municipal Court against SCP and Dominick Presto for violations of the B.O.C.A. Fire Prevention Code. Mr. Presto appeared pro se during the trial. Exhibit "Q".

Similarly, Inmar and Mahan knew or should have known of the hazardous conditions which exist on the Carlstadt site. These parties have been on notice since the early 1970's of this situation but have taken no action to remedy and abate same.

Based upon the landowner's clear knowledge of illegal conditions on their sites which constitute a public nuisance, they too are liable for contributing to and/or allowing said conditions to continue. Accordingly, they should be ordered by this court to immediately abate the nuisance and pay damages caused thereby.

POINT III

THE DOCTRINE OF COLLATERAL ESTOPPEL REQUIRES THAT ALL FINDINGS OF FACT PREVIOUSLY LITIGATED AND DETERMINED AT THE PRIOR ADMINISTRATIVE HEARING ARE BINDING UPON SCP, ENERGALL, PRESTO AND THEIR DIRECTORS AND OFFICERS

The doctrine of collateral estoppel precludes the relitigation in a subsequent action of factual issues fully litigated and determined in a prior one. Harbor Land Development Corp., Inc. v. Mirni, 168 N.J. Super 538, 541 (App. Div. 1979); Gareeb v. Weinstein 161 N.J. Super 1 (App. Div. 1978). In the instant matter, an administrative hearing was held in 1980 wherein numerous issues regarding the operations of the Newark and Carlstadt sites by SCP, Energall and Presto were litigated. Exhibit "E". These issues included: the nature of the operations of SCP, Energall and Presto; the status of the sites; the condition of the equipment at the sites; the control of the above corporations by Sigmond, Barnes, Case and Dominick Presto; whether the corporations had discharged hazardous substances and whether the DEP properly refused to issue new TOA's to the above corporations. After the Administrative Law Judge issued his findings of fact and recommendations, the Commissione of the DEP and the Appellate Division affirmed. (Exhibit "G"). Thus, these findings of act were made and affirmed after full litigation of all issues. It is respectfully submitted, therefore, that pursuant to the doctrine of collateral estoppel, the same findings are now binding upon the parties who participated in the prior litigation. Harbor Land Development Corp. v. Mirni, supra. These parties include SCP, Energall Presto, and their corporate officers and/or directors Sigmond, Case, Barnes and Dominick Presto.

POINT IV

THE CORPORATE VEILS OF SCP, ENERGALL AND PRESTO SHOULD BE PIERCED HOLDING DEFENDANTS SIGMOND, BARNES, CASE AND DOMINICK PRESTO RESPONSIBLE FOR THE ILLEGAL ACTS OF SAID CORPORATIONS

It is generally well settled that a corporation is an entity wholly separate and distinct from the individuals who compose it and control it. Yacker v. Weiner, 109 N.J. Super. 351, 356 (App. Div. 1970). Accordingly, as a general rule, stockholders, directors and officers are permitted to raise the "corporate veil" and isolate themselves from the liability of the corporation. Zubik v. Zubik, 384 F. 2d 267, 273 (3rd Cir. 1967), cert. den. 390 U.S. 988 (1968). However, a court in equity is concerned with substance rather than mere form. It will therefore go behind the corporate veil, where necessary, in order to do justice. Fortugno v. Hudson Manure Co., 51 N.J. Super. 482, 500-501 (App. Div. 1958).

The "Business Corporation Act" of New Jersey provides that the general corporate form may be utilized for the conduct of lawful business subject only to the overriding interests in this State. N.J.S.A. 14A:1-1(3)(b). In addition, it is well settled case law that the corporate veil will be pierced where failure to do so would lead to avoidance of a clear legislative purpose, circumvent a statute, defeat public convenience, justify wrong or protect fraus. United States v. Normandy House Nursing Home, 128 F. Supp. 421 (D. Mass. 1977); Woodland Nursing Home Corp. v. Weinberger, 411 F. Supp. 501, 505 (S.D. N.U. 1975). Thus the corporate veil may not be used to shield illegal activities which are contrary to public interest.

The instant matter involves liability for illegal storage and handling of hazardous wastes together with discharge of the same. The conditions caused by these activities pose a substantial threat to the public health and welfare. Accordingly, this is clearly a matter of public importance. See Hackensack Meadowlands Development Commission, et al v. Mun. Landfill Authority, 68 N.J. 451, 477 (1975); Lom Fan v. Dept. of Env. Protection, 163 N.J. Super. 375, 383 (App. Div. 1978). Also see N.J.S.A. 58:10-23.11a and N.J.S.A. 58:10A-2.

The Administrative Law Judge's report (Exhibit "E") and the affidavits attached hereto clearly establish in the present matter that SCP, Energall and Presto discharged or caused discharges of hazardous substances into the ground water and onto the soil at the Newark and Carlstadt sites. Further, the present conditions of these facilities poses an immediate threat of fire and/or explosion. If such a fire or explosion occurs, toxic fumes will be emitted into the atmosphere in highly populated areas threatening serious injury to those who are exposed. Said conditions were caused by operations of SCP, Energall and Presto in violation of the provisions of The Spill Compensation and Control Act, The Water Pollution Control Act and The Solid Waste Management Act. (See Point I supra).

Based upon the public interest considerations involved in this case and the illegal conduct of the companies, it is respectfully submitted that defendants Sigmond, Case, Barnes and Dominick Presto may not properly isolate themselves from liability in this matter with the corporate veils of SCP, Energall and/or Presto. Schmid v. First Camden Nat. Bank and Trust Co., 130 N.J. Eq. 254 (Ch. Div. 1941);

United States v. Normandy House Nursing Home, supra. Also see United States v. Ira Bushey & Son Inc., 363 F. Supp. 110, 119 (1973). These individual defendants should be fully responsible for the illegal acts of the corporations which they directed, managed and/or controlled. Plaintiff therefore urges this Court of Equity to look behind the corporate veil of said corporations in order to do justice and prevent the individual defendants from avoiding a clear legislative purpose, circumvent environmental statutes, defeat public convenience and justify a wrong. Fortugno v. Hudson Manure Co., supra.

CONCLUSION

For the foregoing reasons it is respectfully submitted that defendants, Scientific Chemical Processing, Inc., Energall, Inc., Presto, Inc., Leif R. Sigmond, Mack Barnes, Herbert C. Case and Dominick Presto are strictly liable, jointly and severally, for violations of the environmental statutes discussed herein. Accordingly, plaintiff urges this court to order them to remove all waste from the Newark and Carlstadt sites in a proper manner under the supervision of the Department of Environmental Protection and to remedy any and all pollution caused by discharges of hazardous substances at the sites.

Further, plaintiff submits that the property owners of the Newark and Carlstadt sites are fully responsible for the conditions which exist on their respective properties. Therefore, this court should order said parties to cleanup their sites by removing all hazardous waste and remedying effects of spills and discharges of hazardous substances which have occurred thereon.

Respectfully yours,

IRWIN I. KIMMELMAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: David W. Reger
David W. Reger
Deputy Attorney General

DATED: May 19, 1983

Bow 4521 Pg. 1044

103—DATED - BARGAIN AND SALE CORP. TO IND. OR CORP. — U T I S B — CERTIFICATE FOR BY ALL STATE LEGAL SUPPLY CO. 345 SHERIDAN ST. MOUNTAINSIDE N.J. 07092

COUNTY OF ESSEX — CONSIDERATION $240,000.00 — REALTY TRANSFER FEE $ — DATE — BY

This Deed, made the 17th day of November, 19 75,

Between LUMINALL PAINTS, INC.

a corporation existing under and by virtue of the laws of the State of Delaware having its principal office at 2750 S. Garfield Avenue, Los Angeles, CA. 90022 herein designated as the Grantor,

and LEIF R. SIGMOND AND DOMINICK PRESTO, PARTNERS

residing or located at 18 Glen Road, Rutherford, New Jersey 07070 herein designated as the Grantees;

Witnesseth, that the Grantor, for and in consideration of TWO HUNDRED FORTY THOUSAND DOLLARS ----------($240,000.00)

lawful money of the United States of America, to it in hand well and truly paid by the Grantees, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the Grantor being therewith fully satisfied, does by these presents grant, bargain, sell and convey unto the Grantees forever,

All those tracts or parcels of land and premises, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey, more particularly described herein

on Exhibit A annexed hereto and made a part hereof.

RECEIVED & RECORDED REGISTER'S OFFICE ESSEX COUNTY, N.J. Dec 5 10 20 AM '75 REGISTER

EXHIBIT "A"

C.P. 228-881

DESCRIPTION

Exhibit A

FIRST TRACT:

Beginning at a point in the northeasterly line of Wilson Avenue (formerly known as Hamburg Place) where the same is intersected by the southeasterly line of land conveyed to the Central Railroad Company of New Jersey by deed dated October 21, 1916 and recorded in Book D-58 of deeds for Essex County, pages 270-272; and from thence running along the aforesaid line of Wilson Avenue South thirty-five degrees, twelve minutes East three hundred ninety-nine and seventy nine hundredths of a foot to line of land now or formerly belonging to the Reid Leather Manufacturing Company, a corporation; thence along the same North fifty-two degrees fifty-seven minutes East two hundred sixty one feet and fourteen hundredths of a foot thence; still along the same North seventy-two degrees one minute East one hundred thirty-six feet and eleven hundredths of a foot to the southeasterly line of land conveyed to the Central Railroad Company of New Jersey by deed dated July 21,1916, and recorded in Book S-57 page 255-270; thence along same on a curve to the right having a radius of three-hundred eighty-four feet and twenty seven hundredths of a foot distance of seventy-two feet and eighty-seven hundredths of a foot; thence still along the same North twenty two degrees twenty four minutes West fifty feet; thence still along the same on a curve to the left having a radius of three hundred thirty-four feet and twenty seven hundredths of a foot a distance of one foot and seventy two hundredths of a foot to the intersection of the second and third courses as described in deed from the Central Railroad Company of New Jersey to Rubber and Celluloid Harness Trimming Company, a corporation of New Jersey, dated October 21, 1916 and recorded in Book K-58 of deeds for Essex County, pages 177-179; thence along line of lands of the Central Railroad Company of New Jersey, North twenty two degrees forty one minutes thirty seconds West one hundred thirty four feet and sixty hundredths of a foot to a point of curve; thence still along same on a curve to the right having a radius of six hundred-twenty-eight feet and thirty six hundredths of a foot a distance of one hundred fourteen feet and ninety six hundredths of a foot; thence still along same South sixty-two degrees fifty seven minutes forty seconds West four hundred eighty one feet and two hundredths of a foot to the Beginning.

SECOND TRACT:

Beginning in the northeasterly side line of Wilson Avenue where it is intersected by the dividing line of lands of the Central Railroad Company of New Jersey and National Chemical & Manufacturing Co.; thence (1) North 62 degrees 57 minutes 40 seconds East along said dividing line of lands a distance of 481.02 feet to a point; thence (2) Northerly through lands of said Railroad Company on a curve to the right with a radius of 628.36 feet an arc distance of 31 feet more or less to a point; thence (3) South 62 degrees 57 minutes 40 seconds West still through lands of said Railroad Company parallel to and distant 30 feet northerly at right angles from the first curve hereof a distance of 286 feet more or less to a point; thence (4) North 51 degrees 16 minutes 20 seconds West still through lands of said Railroad Company a distance of 54 feet more or less to a point; thence (5) South 38 degrees 43 minutes 40 seconds West still through lands of said Railroad Company a distance of 200 feet to the beginning point;

Together with the right to construct and thereafter maintain and use the driveway thirty feet in width more particularly described as follows:

Beginning in the northeasterly side line of Wilson Avenue where it is intersected by the dividing line of lands of The Central Railroad Company of New Jersey and National Chemical & Manufacturing Co., thence (1) North 38 degrees 43 minutes 40 seconds East along part of the fifth course reversed of the above described tract of land and distance of 100 feet to a point; thence (2) North 51 degrees 16 minutes 20 seconds West through lands of said Railroad Company a distance of 30 feet to a point; thence (3) South 38 degrees 43 minutes 40 seconds West still through lands of said Railroad Company parallel and distant 30 feet northwesterly at right angles from the first course hereof a distance of 91.36 feet to a point in said northeasterly side line of Wilson Avenue; thence (4) South 35 degrees 12 minutes East along said northeasterly side line of Wilson Avenue a distance of 31.22 feet to the beginning point.

(cont'd)

as a means of access to and from Wilson Avenue, subject however to the right of said Railroad Company, its successors and assigns, its or their agents, employees, tenants, patrons and invitees, to use said driveway in common with National Chemical & Manufacturing Co., its successors and assigns, with the distinct understanding that said Railroad Company, its successors and assigns, shall not in any way be obligated or liable for the cost, construction, condition maintenance or use of said driveway

Together with all and singular the buildings, improvements, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; And also all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, of the Grantor both in law and in equity of, in and to the premises herein described, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singular, the premises herein described, together with the appurtenances, unto the Grantees and to Grantees' proper use and benefit forever.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

Whenever in this instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation.

In Witness Whereof, the Grantor has caused these presents to be signed and attested by its proper corporate officers and its corporate seal to be hereto affixed the day and year first above written.

ATTEST:

Barbara J. DeLaney
BARBARA J. DE LANEY Secretary

LUMINALL PAINTS, INC.

By: Charles F. Ferrell
CHARLES F. FERRELL President

[Corporate Seal]

California
State of ~~California~~, County of Los Angeles } ss.: Be It Remembered,

that on November 17 1975, before me, the subscriber, a Notary Public of California, as witness my hand and seal,
personally appeared Barbara J DeLaney

who, being by me duly sworn on her oath, deposes and makes proof to my satisfaction, that she is the Secretary of Luminall Paints, Inc.
the Corporation named in the within Instrument;

that Charles F. Ferrell, is the
President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that deponent well knows the corporate seal of said Corporation, and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in presence of deponent, who thereupon subscribed her name thereto as attesting witness.

and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within deed, as such consideration is defined in P.L. 1968, c. 49, Sec. 1(c), is $ 240,000.00

Sworn to and subscribed before me,
the date aforesaid.

Eileen A. Kendall
( )
A Notary Public of California
[Notarial Seal]

Barbara J. DeLaney
(BARBARA J. DE LANEY)
Secretary

EILEEN A. KENDALL
Notary Public - California
Los Angeles County

Prepared by:
Lawrence F. Reilly, Esq.

4521 1017

This Lease Agreement, made the 1st day of January 19 75 ,

Between LEIF R. SIGMOND and DOMINICK PRESTO, partners t/a SIGMOND & PRESTO

residing or located at 18 Glen Road in the Borough of Rutherford in the County of Bergen and State of New Jersey , herein designated as the Landlord,

and ENERGALL, INC., a New Jersey Corporation

residing or located at 411 Wilson Avenue in the City of Newark in the County of Essex and State of New Jersey , herein designated as the Tenant;

Witnesseth that, the Landlord does hereby lease to the Tenant and the Tenant does hereby rent from the Landlord, the following described premises: a portion of premises known as 411 Wilson Avenue, Newark, N.J., all as described and designated on the attached sketch which is made a part hereof.

for a term of Ten (10) years commencing on January 1 19 76 , and ending on December 31, 1986 to be used and occupied only and for no other purpose than chemical plant, including fuel blending.

Upon the following Conditions and Covenants:

1st: *The Tenant covenants and agrees to pay to the Landlord, as rent for and during the term hereof, the sum of* $12,000.00 TWELVE THOUSAND and no/100 DOLLARS . *in the following manner:*

$100.00 per month payable in advance commencing with January 1, 1976, and on the first day of each and every month thereafter. The rent shall be increased, pro rata, for any increase in taxes over the base year 1978.

2nd: *The Tenant has examined the premises and has entered into this lease without any representation on the part of the Landlord as to the condition thereof. The Tenant shall take good care of the premises and shall at the Tenant's own cost and expense, make all repairs, including painting and decorating, and shall maintain the premises in good condition and state of repair, and at the end or other expiration of the term hereof, shall deliver up the rented premises in good order and condition, wear and tear from a reasonable use thereof, and damage by the elements not resulting from the neglect or fault of the Tenant, excepted. The Tenant shall neither encumber nor obstruct the sidewalks, driveways, yards, entrances, hallways and stairs, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow and ice.*

3rd: *The Tenant shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and Municipal Governments or Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply with all orders, regulations, requirements and directives of the Board of Fire Underwriters or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said premises and its contents, for the prevention of fire or other casualty, damage or injury, at the Tenant's own cost and expense.*

4th: *The Tenant shall not assign, mortgage or hypothecate this lease, nor sublet or sublease the premises or any part thereof; nor occupy or use the leased premises or any part thereof, nor permit or suffer the same to be occupied or used for any purposes other than as herein limited, nor for any purpose deemed unlawful, disreputable, or extra hazardous, on account of fire or other casualty.*

5th: *No alterations, additions or improvements shall be made, and no climate regulating, air conditioning, cooling, heating or sprinkler systems, television or radio antennas, heavy equipment, apparatus and fixtures, shall be installed in or attached to the leased premises, without the written consent of the Landlord. Unless otherwise provided herein, all such alterations, additions or improvements and systems, when made, installed in or attached to the said premises, shall belong to and become the property of the Landlord and shall be surrendered with the premises and as part thereof upon the expiration or sooner termination of this lease, without hindrance, molestation or injury.*

6th: *In case of fire or other casualty, the Tenant shall give immediate notice to the Landlord. If the premises shall be partially damaged by fire, the elements or other casualty, the Landlord shall repair the same as speedily as practicable, but the Tenant's obligation to pay the rent hereunder shall not cease. If, in the opinion of the Landlord, the premises be so extensively and substantially damaged as to render them untenantable, then the rent shall cease until such time as the premises shall be made tenantable by the Landlord. However, if, in the opinion of the Landlord, the premises be totally destroyed or so extensively and substantially damaged as to require practically a rebuilding thereof, then the rent shall be paid up to the time of such destruction and then and from thenceforth this lease shall come to an end. In no event however, shall the provisions of this clause become effective or be applicable, if the fire or other casualty and damage shall be the result of the carelessness, negligence or improper conduct of the Tenant or the Tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors. In such case, the Tenant's liability for the payment of the rent and the performance of all the covenants, conditions and terms hereof on the Tenant's part to be performed shall continue and the Tenant shall be liable to the Landlord for the damage and loss suffered by the Landlord. If the Tenant shall have been insured against any of the risks herein covered, then the proceeds of such insurance shall be paid over to the Landlord to the extent of the Landlord's costs and expenses to make the repairs hereunder, and such insurance carriers shall have no recourse against the Landlord for reimbursement.*

7th: *The Tenant agrees that the Landlord and the Landlord's agents, employees or other representatives, shall have the right to enter into and upon the said premises, or any part thereof, at all reasonable hours, for the purpose of examining the same or making such repairs or alterations therein as may be necessary for the safety and preservation thereof. This clause shall not be deemed to be a covenant by the Landlord nor be construed to create an obligation on the part of the Landlord to make such inspections or repairs.*

8th: *The Tenant agrees to permit the Landlord and the Landlord's agents, employees or other representatives to show the premises to persons wishing to rent or purchase the same, and the Tenant agrees that on and after* [illegible] *the term hereof, the Landlord* [illegible]

EXHIBIT "B"

Tenant or the Tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors, the Tenant shall repair the said damage or replace or restore any destroyed parts of the premises, as speedily as possible, at the Tenant's own cost and expense.

10th: The Tenant shall not place nor allow to be placed any signs of any kind whatsoever upon, in or about the said premises or any part thereof, except of a design and structure and in or at such places as may be [illegible] consented to by the Landlord in writing. In case the Landlord or the Landlord's agents, employees or representatives shall deem it necessary to remove any such signs in order to paint or make any repairs, alterations or improvements in or upon said premises or any part thereof, they may be so removed, but shall be replaced at the Landlord's expense when the said repairs, alterations or improvements shall have been completed. Any signs permitted by the Landlord shall at all times conform with all municipal ordinances or other laws and regulations applicable thereto.

11th: The Landlord shall not be liable for any damage or injury which may be sustained by the Tenant or any other person, as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, sewer, waste or soil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like or of the electrical, gas, power, conveyor, refrigeration, sprinkler, airconditioning or heating systems, elevators or hoisting equipment; or by reason of the elements; or resulting from the carelessness, negligence or improper conduct on the part of any other Tenant or of the Landlord or the Landlord's or this or any other Tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors; or attributable to any interference with, interruption of or failure, beyond the control of the landlord, of any services to be furnished or supplied by the Landlord.

12th: This lease shall not be a lien against the said premises in respect to any mortgages that may hereafter be placed upon said premises. The recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien to this lease, irrespective of the date of recording and the Tenant agrees to execute any instruments, without cost, which may be deemed necessary or desirable, to further effect the subordination of this lease to any such mortgage or mortgages. A refusal by the Tenant to execute such instruments shall entitle the Landlord to the option of cancelling this lease, and the term hereof is hereby expressly limited accordingly.

13th: The Tenant has this day deposited with the Landlord the sum of $ as security for the payment of the rent hereunder and the full and faithful performance by the Tenant of the covenants and conditions on the part of the Tenant to be performed. Said sum shall be returned to the Tenant, without interest, after the expiration of the term hereof, provided that the Tenant has fully and faithfully performed all such covenants and conditions and is not in arrears in rent. During the term hereof, the Landlord may, if the Landlord so elects, have recourse to such security, to make good any default by the Tenant, in which event the Tenant shall, on demand, promptly restore said security to its original amount. Liability to repay said security to the Tenant shall run with the reversion and title to said premises, whether any change in ownership thereof be by voluntary alienation or as the result of judicial sale, foreclosure or other proceedings, or the exercise of a right of taking or entry by any mortgagee. The Landlord shall assign or transfer said security, for the benefit of the Tenant, to any subsequent owner or holder of the reversion or title to said premises, in which case the assignee shall become liable for the repayment thereof as herein provided, and the assignor shall be deemed to be released by the Tenant from all liability to return such security. This provision shall be applicable to every alienation or change in title and shall in no wise be deemed to permit the Landlord to retain the security after termination of the Landlord's ownership of the reversion or title. The Tenant shall not mortgage, encumber or assign said security without the written consent of the Landlord.

14th: If for any reason it shall be impossible to obtain fire and other hazard insurance on the buildings and improvements on the leased premises, in an amount and in the form and in insurance companies acceptable to the Landlord, the Landlord may, if the Landlord so elects at any time thereafter, terminate this lease and the term hereof, upon giving to the Tenant fifteen days notice in writing of the Landlord's intention so to do, and upon the giving of such notice, this lease and the term thereof shall terminate. If by reason of the use to which the premises are put by the Tenant or character of or the manner in which the Tenant's business is carried on, the insurance rates for fire and other hazards shall be increased, the Tenant shall upon demand, pay to the Landlord, as rent, the amounts by which the premiums for such insurance are increased. Such payment shall be paid with the next installment of rent but in no case later than one month after such demand, whichever occurs sooner.

15th: The Tenant shall pay when due all the rents or charges for water or other utilities used by the Tenant, which are or may be assessed or imposed upon the leased premises or which are or may be charged to the Landlord by the suppliers thereof during the term hereof, and if not paid, such rents or charges shall be added to and become payable as additional rent with the installment of rent next due or within 30 days of demand therefor, whichever occurs sooner.

16th: If the land and premises leased herein, or of which the leased premises are a part, or any portion thereof, shall be taken under eminent domain or condemnation proceedings, or if suit or other action shall be instituted for the taking or condemnation thereof, or if in lieu of any formal condemnation proceedings or actions, the Landlord shall grant an option to purchase and or shall sell and convey the said premises or any portion thereof, to the governmental or other public authority, agency, body or public utility, seeking to take said land and premises or any portion thereof, then this lease, at the option of the Landlord, shall terminate, and the term hereof shall end as of such date as the Landlord shall fix by notice in writing; and the Tenant shall have no claim or right to claim or be entitled to any portion of any amount which may be awarded as damages or paid as the result of such condemnation proceedings or paid as the purchase price for such option, sale or conveyance in lieu of formal condemnation proceedings; and all rights of the Tenant to damages, if any, are hereby assigned to the Landlord. The Tenant agrees to execute and deliver any instruments, at the expense of the Landlord, as may be deemed necessary or required to expedite any condemnation proceedings or to effectuate a proper transfer of title to such governmental or other public authority, agency, body or public utility seeking to take or acquire the said lands and premises or any portion thereof. The Tenant covenants and agrees to vacate the said premises, remove all the Tenant's personal property therefrom and deliver up peaceable possession thereof to the Landlord or to such other party designated by the Landlord in the aforementioned notice. Failure by the Tenant to comply with any provisions in this clause shall subject the Tenant to such costs, expenses, damages and losses as the Landlord may incur by reason of the Tenant's breach hereof.

17th: If there should occur any default on the part of the Tenant in the performance of any conditions and covenants herein contained, or if during the term hereof the premises or any part thereof shall be or become abandoned or deserted, vacated or vacant, or should the Tenant be evicted by summary proceedings or otherwise, the Landlord, in addition to any other remedies herein contained or as may be permitted by law, may either by force or otherwise, without being liable for prosecution therefor, or for damages, re-enter the said premises and the same have and again possess and enjoy; and as agent for the Tenant or otherwise, re-let the premises and receive the rents therefor and apply the same, first to the payment of such expenses, reasonable attorney fees and costs, as the Landlord may have been put to in re-entering and repossessing the same and in making such repairs and alterations as may be necessary; and second to the payment of the rents due hereunder. The Tenant shall remain liable for such rents as may be in arrears and also the rents as may accrue subsequent to the re-entry by the Landlord, to the extent of the difference between the rents reserved hereunder and the rents, if any, received by the Landlord during the remainder of the unexpired term hereof, after deducting the aforementioned expenses, fees and costs; the same to be paid as such deficiencies arise and are ascertained each month.

18th: Upon the occurrence of any of the contingencies set forth in the preceding clause, or should the Tenant be adjudicated a bankrupt, insolvent or placed in receivership, or should proceedings be instituted by or against the Tenant for bankruptcy, insolvency, receivership, agreement of composition or assignment for the benefit of creditors, or if this lease or the estate of the Tenant hereunder shall pass to another by virtue of any court proceedings, writ of execution, levy, sale, or by operation of law, the Landlord may, if the Landlord so elects, at any time thereafter, terminate this lease and the term hereof, upon giving to the Tenant or to any trustee, receiver, assignee or other person in charge of or acting as custodian of the assets or property of the Tenant, five days notice in writing, of the Landlord's intention so to do. Upon the giving of such notice, this lease and the term hereof shall end on the date fixed in such notice as if the said date was the date originally fixed in this lease for the expiration hereof; and the Landlord shall have the right to remove all persons, goods, fixtures and chattels therefrom, by force or otherwise, without liability for damages.

19th: Any equipment, fixtures, goods or other property of the Tenant, not removed by the Tenant upon the termination of this lease, or upon any quitting, vacating or abandonment [illegible] shall be considered as abandoned and the Landlord shall [illegible] the Tenant for any part of the proceeds [illegible] same, at the expense of the Tenant [illegible]

20th: If the Tenant shall fail or refuse to comply with and perform any conditions and covenants of the within lease, the Landlord may, if the Landlord so elects, [illegible] the Tenant, and the cost and expense [illegible] installment of rent due immediately thereafter [illegible] be due and payable as such. This [illegible] breach by the Tenant [illegible]

[illegible] This lease and the obligation of the Tenant [illegible] conditions hereof [illegible] reason of [illegible] or for any delay [illegible] other [illegible]

[illegible] If any clause

27th: The Tenant has examined the premises and accepts them in their present condition and without any representations or guarantees, whether express, implied or otherwise, on the part of the Landlord as to the present or future condition of the premises.

28th: Tenant shall not be responsible for any repair to any of the structural parts of the building or the roof except when damage is caused by the acts of the Tenant.

29th: Any improvements, repairs or additions to the electrical, plumbing, heating systems or other systems shall be made by Tenant at his own costs and expense.

30th: The Tenant shall pay the Landlord as additional rent his proportionate share of the real estate taxes assessed and levied by the City of Newark against the land and buildings of which the demised premises are a part immediately upon demand by the Landlord.

31st: The Tenant shall pay for all gas, fuel for heat, water, proportionate share of sewer charges, electricity and all other utilities in addition to the other provisions contained.

32nd: Tenant shall pay as additional his proportionate share of the cost of the Electro Protective Service immediately upon demand by the Landlord.

33rd: Landlord shall have the same rights and remedies for the default by the Tenant in the payment required for any additional rent as the Landlord has against the Tenant for the nonpayment of regular rent.

34th: The Tenant shall indemnify, defend and save harmless the Landlord from all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with the Tenant's use or occupancy of the demised premises.

35th: Upon the reasonable request of either party at any time or from time to time, the Landlord and the Tenant agree to execute, acknowledge and deliver to the other, within 10 days after request, a written instrument duly executed and acknowledged, (a) certifying that this lease has not been modified and is in full force and effect, or, if there has been a modification of this lease, that this lease is in full force and effect as modified, stating such modofication; (b) specifying the dates to which the annual fixed rent and additional rent have been paid; (c) stating whether or not, to the knowledge of the party executing such instrument, the other party is in default; and (d) stating the commencement date of this lease. Notwithstanding the foregoing, the 10-day period shall be extended with respect to a request from the Tenant to the Landlord in the event the Landlord's response to it shall be delayed by a mortgagee holding a mortgage on the demised premises.

36th: If at any time during the term of this lease a tax or charge be imposed by the State of New Jersey or the county or municipality in which the premises are located, pursuant to any future law, which tax or charge shall be based on the rent paid by the Tenant to the Landlord, the Tenant shall pay the Landlord as additional rent, upon demand of the Landlord, such tax or charge. The foregoing shall not require payment by the Tenant of any income taxes assessed against the Landlord or any capital levy, franchise, estate, succession, inheritance or transfer taxes due from the Landlord.

37th: The Tenant shall, at the Tenant's own cost and expense, maintain the sprinkler system in the demised premises. All water utility charges and fees with regard to the sprinkler system shall be paid by the Tenant. If the Board of Fire Underwriters or any federal, state or municipal government requires or recommends any changes, alterations or additional sprinkler heads or other equipment be made by reason of the Tenant's business or occupation, or location of partitions, trade fixtures or other contents, or any [illegible] areas, alterations or additional sprinkler heads or other equipment [illegible] change enables the full allowance for [illegible] take as fixed by the Board of Fire [illegible] and cost, or modify make and supply [illegible] sprinkler heads or other equipment [illegible] shall maintain the sprinkler system [illegible]

38th: The Tenant shall pay and discharge as additional rent a proportionate share of all insurance premiums on the demised building, for the following insurance coverages, which insurance premiums shall be based on all insurance on the land and building of which the demised premises are a part:

(a) Loss of damage by fire; loss or damage by other risks contemplated within extended coverage endorsements (as such endorsements are customarily written in the State of New Jersey); such other risks as shall be carried by the Landlord (including but not limited to "all risks" coverage, flood insurance and glass breakage insurance); water damage (including sprinkler system) liability insurance; and vandalism and malicious mischief insurance. This insurance shall (a) name the Landlord as the insured and provide that any loss shall be payable to the Landlord; (b) provide that no act of the Tenant shall impair the rights of the Landlord to receive and collect the insurance proceeds; and (c) provide that the rights of the Landlord shall not be diminished because of any additional insurance carried by the Tenant for the Tenant's own account.

(b) General liability insurance covering claims for bodily injury, death, or property damage occurring in or about the demised premises; including any sidewalks adjoining the demised premises. This insurance shall be in the amount of not less than $500,000 in the event of bodily injury or death to any one person; not less than $1,000,000 in respect of any one accident; and not less than $50,000 for property damage; and shall name the Landlord as the insured.

(c) The Tenant shall pay the Landlord the Tenant's proportionate share of the insurance premiums, upon the Landlord's demand. If the Tenant fails to pay, the Landlord shall have the same remedy as provided to the Landlord in this lease for the Tenant's default in the payment of rent.

(d) In addition to Tenant paying his proportionate share of the insurance set forth in subsection (a) hereof, he shall pay any increase in the overall premium caused by Tenant's use and occupancy as related to the entire structure or any portion thereof all as set forth in Paragraph 14th hereof.

39th: No receipt of money by the Landlord from any receiver, trustee or custodian or debtors in possession shall reinstate, continue or extend the term of this lease or affect any notice theretofore given to the Tenant or to any such receiver, trustee, custodian or debtor in possession or operate as a waiver or estoppel of the right of the Landlord to recover possession of the demised premises for any of the causes therein enumerated by any lawful remedy, and the failure of the Landlord to enforce any covenant or condition by reason of its breach by the Tenant after notice had, shall not be deemed to void or affect the right of the Landlord to enforce the same covenant or condition on the occasion of any subsequent default or breach.

40th: This lease and the obligation of Tenant to pay rent and perform all of the other terms, covenants and conditions on part of Tenant to be performed shall in nowise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in connection with a National Emergency declared by the President of the United States or in connection with any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency, or any other matter beyond the control of the Landlord, including but not limited to weather conditions.

SIGERGALL, INC.

By _____
Leif A. Sigerdall Tenant

SIGMOND A. PRESTO

By _____
Dominick Presto Landlord

[illegible] to be a waiver or a relinquishment for the future by the Landlord of any such conditions and covenants, options, elections or [illegible], but the same shall continue in full force and effect.

25th: All notices required under the terms of this lease shall be given and shall be complete by mailing such notices by certified or registered mail, return receipt requested, to the address of the parties as shown at the head of this lease, or to such other address as may be designated in writing, which notice of change of address shall be given in the same manner.

26th: The Landlord covenants and represents that the Landlord is the owner of the premises herein leased and has the right and authority to enter into, execute and deliver this lease; and does further covenant that the Tenant on paying the rent and performing the conditions and covenants herein contained, shall and may peaceably and quietly have, hold and enjoy the leased premises for the term aforementioned.

28th: This lease contains the entire contract between the parties. No representative, agent or employee of the Landlord has been authorized to make any representations or promises with reference to the within letting or to vary, alter or modify the terms hereof. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the Landlord and the Tenant.

See Rider Attached

The Landlord may pursue the relief or remedy sought in any invalid clause, by conforming the said clause with the provisions of the statutes or the regulations of any governmental agency in such case made and provided as if the particular provisions of the applicable statutes or regulations were set forth herein at length.

In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, or caused these presents to be signed by their proper corporate officers and their proper corporate seal to be hereto affixed, the day and year first above written.

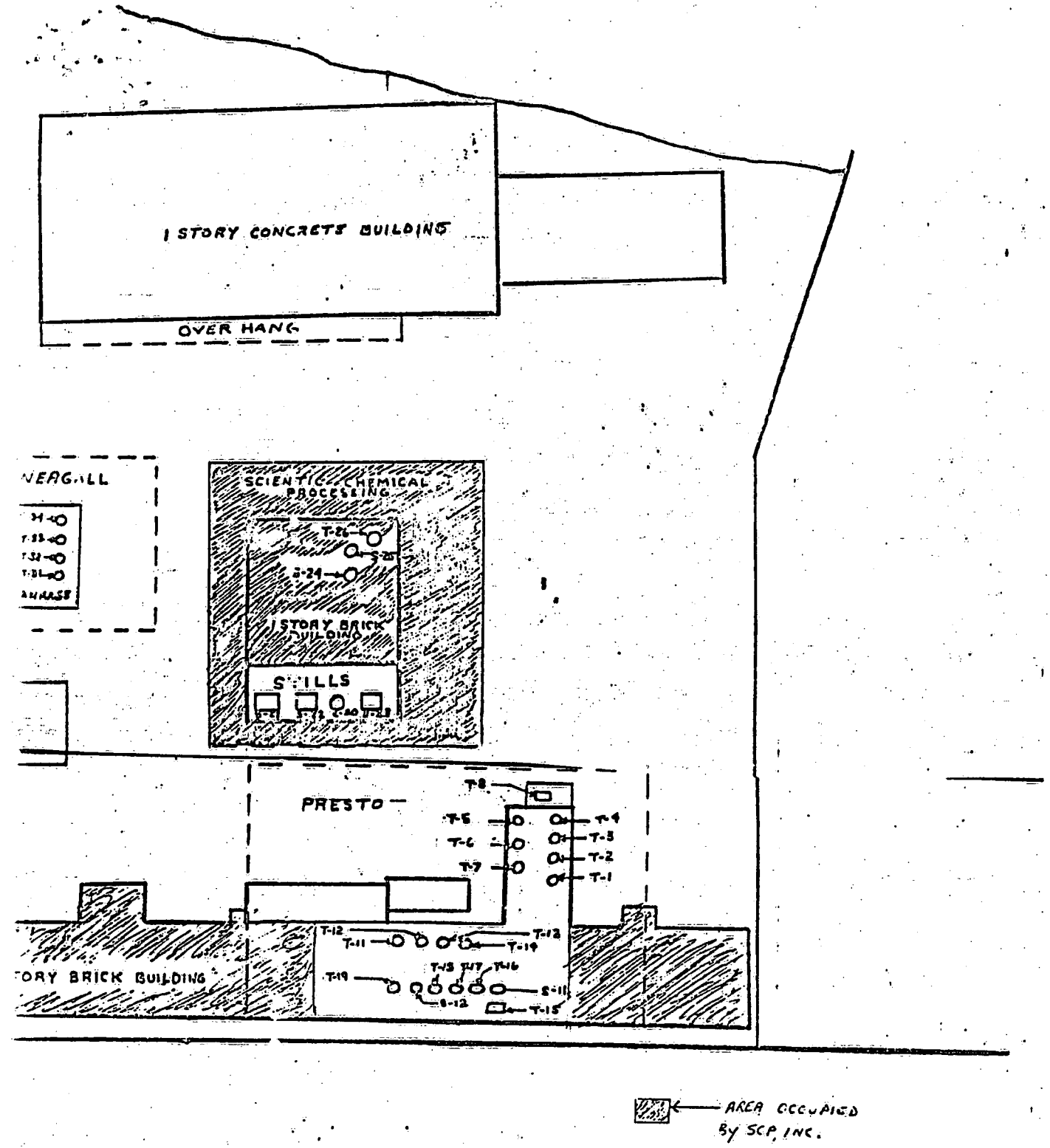
Signed, Sealed and Delivered
in the presence of
or Attested by

SIGMOND & PRESTO

By _____
Dominick Presto — Landlord

ENERGALL, INC.

By _____
Leif A. Sigmond — Tenant


1 STORY CONCRETE BUILDING
OVER HANG
SCIENTIC CHEMICAL PROCESSING
T-26
S-25
S-24
1 STORY BRICK BUILDING
STILLS
PRESTO
T-8
T-5
T-6
T-7
T-4
T-3
T-2
T-1
T-12
T-11
T-13
T-19
T-18
T-17
T-16
S-11
S-12
T-15
ORY BRICK BUILDING
AREA OCCUPIED BY SCP, INC.

VILSON AVE.

Consideration 30,000.00
Realty Transfer Fee 112.50
Recording Fee 5.00
By RS Total $ 117.50

This Deed, made the 20th day of September 1977

Between PATRICK MARONE, widower

residing at 50 Terhune Avenue
in the City of Passaic in the County of Passaic
and State of New Jersey herein designated as the Grantors,

And

INMAR ASSOCIATES, INC., a corporation of New Jersey
having its principal office at 1703 E. Second Street

residing or located at
in the Township of Scotch Plains in the County of Union
and State of New Jersey herein designated as the Grantees;

Witnesseth, that the Grantors, for and in consideration of

----------THIRTY THOUSAND ($30,000.00) DOLLARS ----------

lawful money of the United States of America, to the Grantors in hand well and truly paid by the Grantees, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the Grantors being therewith fully satisfied, do by these presents grant, bargain, sell and convey unto the Grantees forever,

All that tract or parcel of land and premises, situate, lying and being in the Borough of Carlstadt in the County of Bergen and State of New Jersey, more particularly described as follows:

KNOWN and designated as Lots 4, 5 and 6 on map of property entitled "Map of Paterson PlankRoad Lots, Property of A.W. Van Winkle & Co., East Rutherford and Carlstadt, N.J." dated February 1921, and filed in the Office of the Clerk of the County of Bergen, April 12, 1923 as Map #1035. EXCEPTING AND RESERVING thereout and therefrom premises conveyed to Sparrow Realty, Inc., a New Jersey Corporation, by a deed from Patrick Marone dated February 23, 1967 and recorded February 27, 1967 in Deed Book 5018, Page 405.

BEING part of the same premises conveyed to the grantors herein by deed recorded in the Bergen County Clerk's Office in Book 1345, at Page 229.

BEING Lots 18B and 20B in Block 135 as set forth on the Tax Assessment Map for the Borough of Carlstadt.

SUBJECT to easement acquired by the State of New Jersey through condemnation recorded in L.P. Book 70 Page 440 and Deed Book 5908 Page 192.

RECEIVED
1977 SEP 21 AM 11 19
REGISTER COUNTY CLERK

BOOK 6297 PAGE 120

EXHIBIT "C"

Together with all and singular the buildings, improvements, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; And also all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, of the Grantors both in law and in equity, of, in and to the premises herein described, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singular, the premises herein described, together with the appurtenances, unto the Grantees and to Grantees' proper use and benefit forever

And the Grantors covenant that they have not done or executed, or knowingly suffered to be done or executed, any act, deed or thing whatsoever whereby or by means whereof the premises conveyed herein, or any part thereof, now are or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

Wherever in this instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation.

In Witness Whereof, the Grantors have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered
in the presence of

Dominick Presto
DOMINICK PRESTO

Patrick Marone (L.S.)
PATRICK MARONE, Widower

(L.S.)

State of New Jersey, County of Bergen } ss.: Be it Remembered,
that on September 20th 1977, before me, the subscriber, Dominick Presto,
an attorney at law of New Jersey
personally appeared Patrick Marone

who, I am satisfied, is the person named in and who executed the within instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his act and deed, for the uses and purposes therein expressed, and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within deed, as such consideration is defined in P.L. 1968, c. 49, Sec. 1 (c), is $ 30,000.00

Prepared by: Dominick Presto, Esq.

Dominick Presto
DOMINICK PRESTO, an attorney at law of
New Jersey

BOOK 6297 PAGE 121

Consideration $30,000.00
Realty Transfer Fee 105.00
Recording Fee 9.25
By RS Total $ 114.25

Deed

PATRICK MARONE, Widower

TO

INMAR ASSOCIATES, INC.
A Corporation of New Jersey

SP2111 DEED A 56221 925 10500 11425

Dated September 20th 1977

RECORD AND RETURN TO:

PRESTO & BARBIRE, ESQS.
18 Glen Road
Rutherford, N.J. 07070

ABSTRACTED

BOOK 6097 PAGE 122

END OF DOCUMENT

THIS AGREEMENT, made this 31st day of October in the year One Thousand Nine Hundred and Seventy

BETWEEN [illegible] ASSOCIATES, [illegible] corporation of the State of New Jersey with principal offices at [illegible] Street, Scotch Plains, New Jersey, party of the first part, hereinafter known as the "Landlord",

AND SCIENTIFIC CHEMICAL PROCESSING, a corporation of the State of New Jersey with offices at 320 Paterson Plank Road, Carlstadt, New Jersey, party of the second part, hereinafter known as the "Tenant":

WITNESSETH, That the said Landlord has agreed to LET and DEMISE and hereby does LET and DEMISE to the said Tenant, and the said Tenant has agreed to HIRE and does hereby HIRE from the said Landlord the following described property:

"ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Carlstadt, in the County of Bergen and State of New Jersey.

FIRST TRACT: BEGINNING at a point of intersection where the northeasterly line of Paterson Avenue intersects the northwesterly line of property conveyed by Clarence Mabie, Special Master, to A. W. Van Winkle & Co., a New Jersey corporation, by deed dated October 2nd, 1911, and recorded in Book 1046 page 299 in the Bergen County Clerk's Office at Hackensack, Bergen County, and running thence (1) Northeasterly along the northwesterly line of the property conveyed by the aforesaid Deed, 500 feet more or less to Peach Island Creek; thence returning to the first place of beginning and running thence (2) Southeasterly along the northeasterly line of Paterson Avenue, 150 feet; thence (3) Northeasterly and parallel with the first described line, 500 feet more or less to Peach Island Creek; thence (4) Northwesterly along Peach Island Creek, 150 feet more or less to the point on Peach Island Creek where the same is intersected by the first course herein, excepting therefrom easements of Peach Island Creek and the New York and Paterson Plank Road now known as Paterson Avenue.

SECOND TRACT: BEING commonly known as Block 31 on the Official Assessment Map of the Borough of Carlstadt as shown on Sheet #7 of the Map of North Jersey Title Guaranty Company 1901-1904, which said property has a frontage of approximately 275 feet more or less on Paterson Plank Road and extending 490 feet more or less northeasterly to Peach Island Creek, which premises comprise approximately 3 acres more or less and more particularly described as follows: BEGINNING at a point where the northeasterly line of Paterson Plank Road produced southeasterly would be intersected by the center line of Route 20 produced northeasterly and from thence running North 25 degrees 02 minutes 40 seconds West 1874.66 feet to a point along said side of Paterson Plank Road; still

EXHIBIT "D"